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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,315	05/16/2006	Katie Rochester	06-362	8201
20306 7590 10/02/2009 MCDONNELL BOEHNEN HULBERT & BERGHOF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO, IL 60606			EXAMINER FARAH, AHMED M	
			ART UNIT	PAPER NUMBER
			3769	
			MAIL DATE	DELIVERY MODE
			10/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,315

Applicant(s)

ROCHESTER ET AL.

Examiner

Ahmed M. Farah

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,12-21,23-29 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-21,23-29 and 32-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/25/06 and 5/4/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-14 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biel Pub. No. US 2003/0009205 in view of Heeger et al. US Patent No. 5,408,109.

Biel discloses a phototherapy apparatus comprising: one or more flexible light emitting diode arrays formed on respective regions of a flexible substrate, and at least one or more light detectors formed on said substrate (see Fig. 4, and claims 25).

With respect to claims 6-8, Biel teaches the treatment light has a wavelength between 450 nm-850 nm (see claim 36). This wavelength range encompasses the claimed wavelength ranges.

With respect to claims 12-14, he teaches the flexible substrate further comprises adhesive element for securing the substrate to the treatment site (see claim 33).

Although Biel teaches the phototherapy device (including the LEDs and the flexible substrate) is flexible, he does not specifically teach the LEDs are flexible. He further fails to teach the use of organic light emitting diodes (OLEDs). However, the use

of flexible light emitting diodes, such as OLEDs to provide optical energy is known in the art. Heeger et al. teach the use of light emitting diodes made of flexible organic substrate for generating optical energy. Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Biel in view of Heeger et al. and use flexible OLEDs as equivalent alternative light sources to provide the therapeutic treatment energy as claimed.

Claims 15-21 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biel and Heeger et al. as applied to claims 1-14 and 23-29 above, and further in view of Bazan et al. Pub. No. US 2005/0035346 and Lai US Patent No. 6,210,401.

With respect to claim 14, Biel does not teach the use of triplet emitter LEDs. However, the use of triplet emitting LEDs is known in the art. Bazan et al. disclose the use of triplet emitting LEDs. Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Biel in view of Bazan et al. and use triplet emitting LEDs as an alternative light sources.

With respect to claims 16-21 and 32-34 Biel further fails to teach the use of wavelength converter(s). However, the use of wavelength converter is also known in the art. Lai discloses alternative light therapy device comprising a wavelength converter, such as grating, prisms, etc. (see Figs. 5a and 5B). Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to

modify Biel in view of Lai to use wavelength a converter, such as grating, prisms, etc. to modify the output wavelength of the treatment energy as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/
Primary Examiner, Art Unit 3769

September 30, 2009.